



October 24, 2014

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
Filed at: [http://www.epa.gov/foia/make\\_a\\_request.html](http://www.epa.gov/foia/make_a_request.html)

**SUBMITTED VIA ONLINE SUBMISSION FORM**

**RE: Freedom of Information Act Request–neonicotinoid insecticides, corn benefits review and other matters**

To the National Freedom of Information Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552. I, Larissa Walker, on behalf of CFS, respectfully request the following information, which is believed to likely be within the Office of Pesticide Programs:

**Referring to any and all of the neonicotinoid insecticides, that is, acetamiprid, clothianidin, dinotefuran, imidacloprid, thiacloprid and thiamethoxam:**

- a) All information related to EPA’s analysis of the use of the neonicotinoid seed treatments for insect control in United States corn production, including, but not limited to, any preliminary analysis or scoping done, whether done by the Biological and Economic Analysis Division or any other division. Include within this all responses received from related questionnaires sent to any of the national Integrated Pest Management (IPM) Centers or from any other non-EPA sources.**
- b) All documents related to completed or ongoing “whole hive studies” for the effects of those insecticides on colonies of honey bees.**
- c) All information related to EPA independently, or in collaboration with U.S. Department of Agriculture, researching the direct and indirect economic benefits of honey bees and how potential effects of neonicotinoids on honey bee health may correlate with economic losses.**

**NATIONAL HEADQUARTERS**  
660 Pennsylvania Avenue, SE, Suite 302  
Washington, D.C. 20003  
T: 202-547-9359 F: 202-547-9429

**CALIFORNIA OFFICE**  
303 Sacramento Street, 2nd Floor  
San Francisco, CA 94111  
T: 415-826-2770 F: 415-826-0507

**PACIFIC NORTHWEST OFFICE**  
917 SW Oak Street, Suite 300  
Portland, OR 97205  
T: 971-271-7372 F: 971-271-7374

**HAWAII OFFICE**  
1132 Bishop Street, Suite 2107  
Honolulu, Hawaii 96813  
T: 808-681-7688

[office@centerforfoodsafety.org](mailto:office@centerforfoodsafety.org)

[centerforfoodsafety.org](http://centerforfoodsafety.org)

- d) Any internal documentation of accelerations of the projected Regulatory Review schedules for any of the neonicotinoid active ingredients to earlier projected completion dates than the completion dates EPA had previously projected. (the basis for this is highlighted in the footnote below.<sup>1</sup>)**
- e) Any other emails, memoranda, reports, letters, risk analyses, scientific data, summaries, studies, plans, policy directives, notes, guidance or other material in any form whatsoever related to the document requests above.**

This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

CFS requests this information in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails...In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

### **EXPEDITED PROCESSING IS NECESSARY**

CFS, as an organization whose primary goal is dissemination of information and advocacy on behalf of the public (see below), has an urgent need to inform the public about government activity concerning information on the impact of neonicotinoid, pesticides and Colony Collapse

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<sup>1</sup> Per this Oct. 22, 2014, media report (in pertinent part): *The EPA is close to finalizing its assessment of the risks neonicotinoid pesticides pose to pollinators, data that will be used as the agency prepares to reregister many of those insecticides in 2016 and 2017. Jim Jones, assistant administrator of EPA’s Office of Chemical Safety and Pollution Prevention, told the North American Pollinator Protection Campaign at its annual conference this morning, in Washington, D.C., that the agency is moving the reregistration of the chemicals up from 2018 due to the completion of studies on how to assess the risks of the chemicals to an entire hive. //////////////*

— Jenny Hopkinson <https://www.politicopro.com/agriculture/whiteboard/?wbid=42418>

Disorder impacts on honeybees in organic farming as well as on agriculture more generally, as well as on endangered species and ecosystem sustainability.

Given the significant impacts that may result from neonicotinoid pesticide registration and use on pollinators, honeybees, and agriculture, sufficient urgency exists to require expedited processing. A certification of the need for expedited processing can be found at the bottom of this letter.

### **REQUEST FOR FEE-WAIVER**

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

The factors EPA must consider in deciding upon a fee waiver request are laid out in 40 C.F.R. § 2.107(l), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (4) Whether the contribution to public understanding is significant.

40 C.F.R. § 2.107(l). These factors are to be balanced against one another; no one factor is determinative. *See Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to CFS and this request. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g., OMB Fee Guidelines*, 52 Fed. Reg. 10017-18; *see also* 40 C.F.R. § 2.107(b)(1). Such interests are not present in this request. CFS does not seek information from EPA for commercial gain or interest. As a 501(c)(3) nonprofit organization, CFS has no commercial interest in EPA's involvement in the industry-led meeting of April 16, 2014.

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S.

14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

**I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

**A. The subject of the disclosure concerns “the operations and activities of the government.”**

The requested information pertains to EPA’s regulation of U.S. pesticide safety. Over the last approximately thirteen years, EPA has approved dozens of uses of neonicotinoid insecticides. EPA’s Office of Pesticide Programs (OPP) is the division of the EPA with regulatory oversight over pesticide registration in the United States through the implementation of the Federal Insecticide, Fungicide, and Rodenticide Act. It is irrefutable that EPA’s regulatory control over pesticide registrations and regulation of pesticide safety is a clearly identifiable operation of the government. This disclosure will demonstrate to the public at large EPA’s processes in carrying out these activities.

**B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.**

As discussed in the previous section, the present disclosure will provide the public a better understanding of EPA’s regulation of pesticides in the United States. CFS is a non-profit organization that informs, educates and counsels the public—via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, Food Safety Now!—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on pesticides and genetically engineered crops and their impact on human health, animal health, and the environment.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

**C. The disclosure will contribute to the understanding of a “reasonably broad audience of persons interested in the subject” (40 C.F.R. § 2.107(l)(2)(iii)).**

CFS is a member-oriented organization with over 500,000 members that works to address the impacts of the food system on human health, animal welfare, and the environment. Through over a decade of involvement in environmental litigation and policymaking as it relates to food, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS employs science and policy experts<sup>2</sup> who have analyzed FOIA, NEPA, and other environmental and scientific reports for their entire careers. CFS puts out reports on pesticides, genetically engineered foods, food and feed additives, and other topics that tend to be difficult for the layperson to understand without professional assistance.<sup>3</sup> CFS has made comments to EPA on the potential catastrophic effects of increased 2,4-D use due to new genetically engineered crop approval and the re-registration of the pesticide glyphosate. CFS also facilitates members' ability to confront agency inaction, such as the hundreds of thousands of citizens who petitioned EPA to act upon a CFS formal petition and adopt emergency measures to slow the spread of colony-collapse disorder in honey bees.<sup>4</sup> Recently, CFS delivered to EPA a petition with over half a million signatures urging EPA to follow the European Union's lead in recognizing the risk of neonicotinoid pesticides.<sup>5</sup>

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the "reasonably broad audience" factor. *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. *See W. Watersheds Project v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004). CFS's activity in these respects far outstrips any minimums established by judicial interpretation.

## **II. Obtaining the information is of no commercial interest to CFS.**

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the

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<sup>2</sup> See Leadership, Center for Food Safety, <http://www.centerforfoodsafety.org/staff> (last visited June 24, 2014).

<sup>3</sup> See Publications & Resources, Center for Food Safety, <http://www.centerforfoodsafety.org/reports> (last visited June 24, 2014).

<sup>4</sup> See Press Release, Center for Food Safety, 250,000+ to EPA: Time for Emergency Action on Pesticide to Protect Bees (June 28, 2012), <http://centerforfoodsafety.com/press-releases/713/250000-to-epa-time-for-emergency-action-on-pesticide-to-protect-bees>.

<sup>5</sup> See Press Release, Center for Food Safety, Half a Million Demand Action from EPA to Save Bees (Mar. 21, 2014), <http://centerforfoodsafety.com/issues/304/pollinators-and-pesticides/press-releases/2995/half-a-million-demand-action-from-epa-to-save-bees>.

general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA

Based upon the foregoing, CFS requests that this FOIA be classified within the EPA's fee waiver category and that FDA send the requested information as required by law. As this is a matter of extreme importance to CFS, a reply within twenty working days, as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), is insufficient in light of the immediate need for these records. As such, we look forward to your reply within ten working days, as required by FIFRA, 5 U.S.C. § 552(a)(6)(E)(ii)(I). If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink.

Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to the Washington, D.C. address on the letterhead. Call me at (202) 547-9359 if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/

Larissa Walker

**I, Larissa Walker, certify that CFS's need for expedited processing is true and correct to the best of my knowledge and belief.**